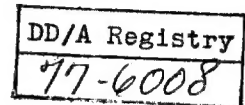


14 NOV 1977



On file, OMB release instructions apply.

MEMORANDUM FOR: Mr. Lester A. Fettig, Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President

SUBJECT: Proposed Policy, Organizational
Conflict of Interest

REFERENCE: Memo dtd Sep 27, 1977 To The Heads of
Executive Departments and Establish-
ments fm OFPP/OMB, same subject

The referent memorandum requests official Agency views on a draft of a proposed policy on organizational conflict of interest which is proposed for issuance by the Office of Federal Procurement Policy, pursuant to Public Law 93-400. The proposed policy changes expand on existing organizational conflict of interest regulations in areas which we believe are necessary to eliminate possible abuses in the Federal procurement system. The Central Intelligence Agency concurs fully with both the purpose and method of implementing the proposed policy changes.

/s/John F. Blake

John F. Blake
Acting Deputy Director

Distribution:

Orig - Addressee
1 - A-DDCI
1 - ER
✓ 1 - A-DDA
1 - OL Official

Thmm. Subject

Originating Office: /s/ James H. McDonald
James H. McDonald
Director of Logistics

10 NOV 1977
Date

STATINTL

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

177-9255
DD/A Register
77-5389

SEP 27 1977

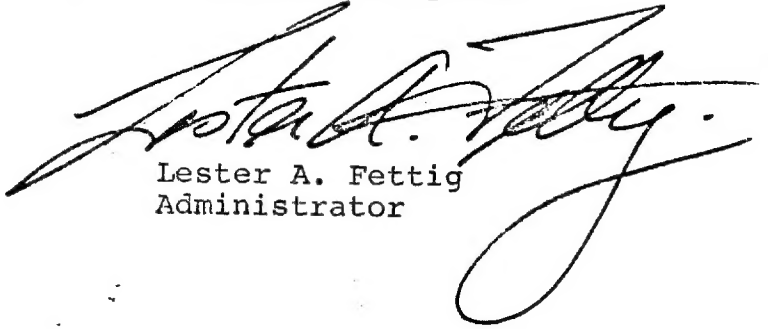
TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Proposed Policy, Organizational Conflict
of Interest

Enclosed is a proposed policy to be issued by my office pursuant to Public Law 93-400. This matter was published in the Federal Register on September 20, 1977.

Official agency views on the enclosed draft should be submitted to the Administrator for Federal Procurement Policy by November 20, 1977. Following receipt of comments, a public meeting will be scheduled for the purpose of hearing oral presentations.

Questions may be referred to Jack A. Nadol, Deputy Assistant Administrator for Regulations, telephone (202) 395-6987.


Lester A. Fettig
Administrator

Enclosure

OFFICE OF MANAGEMENT AND BUDGET

OFFICE OF FEDERAL PROCUREMENT POLICY

Proposed Policy: Invitation for Public Comment

The Office of Federal Procurement Policy, Office of Management and Budget, is considering the adoption of a policy which would require the use by all Federal executive agencies of regulations and contract clauses governing organizational conflicts of interest.

The problem of organizational conflicts of interest has received much recent attention by Federal executive agencies and Congress. It is the view of this Office that any attempted solution to this problem -- to the extent it involves imposing procurement regulations and contractual requirements -- should be uniformly applicable Government-wide.

This proposed policy would amend the Federal Procurement Regulations by adding a Section 24 and would supersede Appendix G of the Armed Service Procurement Regulation (ASPR).

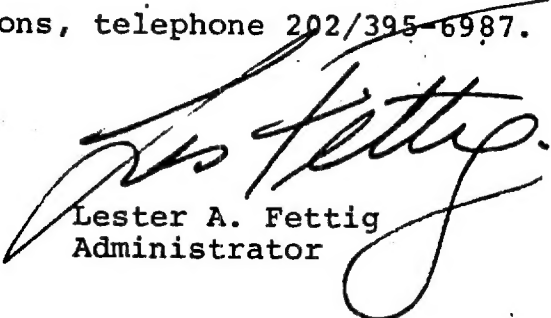
The policy is directed to the avoidance of contractual relationships which might encourage contractors to give biased advice and, secondly, the reduction of opportunities for contractors to gain an unfair competitive advantage. The policy would require contractors to disclose existing organizational conflicts when submitting an offer, and to stay free of conflicts during performance or be terminated.

It requires contracting officers to make determinations regarding the existence and elimination of organizational conflicts of interest. The policy would also require the incorporation of organizational conflicts of interest solicitation notices and contract clauses.

The "Organizational Conflict of Interest" regulations and clauses which follow are proposed for mandatory use by all Federal executive agencies.

Comments should be addressed to the Administrator for Federal Procurement Policy, Office of Management and Budget, Washington, D. C. 20503 and should be received by November 22, 1977.

Questions may be referred to Mr. Jack Nadol, Deputy Assistant Administrator for Regulations, telephone 202/395-6987.



Lester A. Fettig
Administrator

Section 2402

Defines organizational conflict of interest (OCI) as an interest that may diminish objectivity or give unfair competitive advantage. This definition includes the interest of chief executives and directors of an organization to insure that (OCI) rules will not be circumvented by creation of a sister corporation by directors who have no legal affiliation. It also includes subcontractors and consultants so as to reduce another opportunity for abuse.

Section 2403

Lists possible situations where OCI may exist or arise. This is to overcome the belief by many that OCI covers only "hardware exclusion" and restrictive specifications.

Section 2404

Requires offerors to disclose potential OCI. One of the major weaknesses of the current regulation is that no disclosure is required and contracting officers are making awards with little knowledge of potential OCI.

Section 2405

Requires notice in the solicitation that if an OCI could result, a clause to eliminate OCI will be incorporated into the contract. Such a clause could prohibit a contractor from some future work and he should be advised of this prior to making a proposal.

Section 2406

Requires that a solicitation representation be included in all evaluation, consultant, management support, research and development contracts, and other contracts over \$100,000. This coverage is agreed to by DOD and GSA; however, DOD would cover only negotiated contracts, while GSA would cover both negotiated and formally advertised. Our draft covers the latter. OCI type prohibitions are not self executing and may be applied only if specifically incorporated into a solicitation or contract clause. We therefore require wide application of solicitation representation so the contracting officer will have the knowledge on which to make his determination and to incorporate a contract clause to avoid OCI.

Section 2407-1

The general conflict clause requires the contractor to warrant there is no conflict of interest and requires notice to the C.O. if one arises. It also gives the C.O. authority to terminate.

Section 2407-2

Lists areas where OCI may be avoided by special clauses, e.g. "hardware exclusion."

Section 2403

Requires a D&F when OCI is present or an exception is granted.

Section 2411

Requires pass through to subcontracts and consultant agreements.

Section 2412

Provides that in addition to other remedies for violation of OCI rules a contractor may be disqualified from subsequent agency contracting.

Section 2413

Explains and gives examples of OCI. This is similar to the current appendix G provisions of ASPR. It provides help to C.O.s in making determinations as to whether or not OCI is present.

1.2400 Scope of Subpart

This subpart sets forth policies and procedures regarding organizational conflicts of interest.

1.2401 Policy.

It is the policy of the Government that organizational conflicts of interest connected with the procurement of supplies and services be identified, prior to award if possible, and be adequately avoided, eliminated, or neutralized.

1.2402 Definitions.

(a) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including his chief executives, directors, proposed consultants or subcontractors) has interests which (1) may diminish his capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product or, (2) may result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(b) The term "contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in 41 CFR § 1-1.601-1 (e).

1.2403 Conflict of interest

(a) In addition to other situations, an organizational conflict of interest may exist or arise:

- (1) Even if there is no follow-on procurement;
- (2) Even if a contract is awarded on a noncompetitive or a sole source basis;
- (3) Even though a hardware exclusion clause may not be appropriate;
- (4) From prior and prospective interests as well as current interests.
- (5) Whenever the contractor's judgement or performance may be biased even though there is no competitive advantage.
- (6) From benefits which later accrue to the industry even if the contractor receives no more benefits than any other contractor in the industry.
- (7) From benefits which are not directly financial in character.

(b) The fact that the Government can identify and later eliminate or neutralize any potential bias arising from the performance of or affecting the work product of a contract, is not relevant to a determination regarding the existence and elimination of an organizational conflict of interest prior to award.

(c) The existence of an organizational conflict of interest is more likely to be disclosed if a contract results from competition. Accordingly, greater care shall be exercised in the absence of competition, particularly whenever a contract may result from an unsolicited proposal.

(d) It is not relevant that the contractor has the professional reputation of being able to resist temptations which may arise from an organizational conflict of interest.

(e) An organizational conflict of interest is presumed to exist whenever one of the contractual relationships prohibited by paragraph 1-2413 would appear to result.

1.2404 Disclosure of potential organizational conflicts of interest.

When submitting offers (bids and proposals) in connection with the procurement of supplies and services, offerors and contractors (with respect to modifications) shall be required to disclose any organizational conflicts of interest by completing the representation required by 1.2406. When a contracting officer finds that an organizational conflict of interest exists or may exist with respect to an offeror or contractor, no contract or contract modification award shall be made until the organizational conflict of interest has been adequately avoided, eliminated or neutralized, except as provided in 1.2408 below.

1.2405 Notices and representations; action required of contracting officers.

(a) The representation required by 1.2406 is designed to alert the contracting officer to situations or relationships which may constitute either present or future organizational conflicts of interest with respect to a particular offeror or contractor.

However, this representation may not identify a potential organizational conflict of interest involving a successful offeror that could affect his participation in subsequent procurements arising

out of or related to work performed under a contract that results from a solicitation currently under consideration. Accordingly, whenever such potential conflicts are foreseeable by the contracting officer, a special notice also shall be included in the solicitation informing offerors of the fact that such a potential conflict is foreseen and that a special contract clause designed to eliminate the conflict will be included in any resultant contract as required by 1.2407(.2). Such notice shall specify the proposed extent and duration of restrictions to be imposed with respect to participation in subsequent procurements. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage. This is a variable; for example, it may run to the date of award of a first production contract or for a stated period of time. Except in the few instances where a permanent exclusion is appropriate, in no event shall an exclusion be stated which is not related to a specific expiration date or an event certain.

1.2406 Representation.

(a) The representation prescribed by this section shall be included in (1) all solicitations for the conduct of evaluation services and for technical, consulting and management support services, (2) solicitations, modifications and unsolicited proposals involving research and development and (3) all other solicitations, modifications, and unsolicited proposals which may exceed

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It also may be employed as otherwise deemed desirable by the heads of agencies.

"ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION

(a) The offeror represents, to the best of his knowledge and belief, that:

The award to him of a contract or the modification of an existing contract does () or does not () involve an organizational conflict of interest as defined in the Federal Procurement Regulations (see 41 CFR 1.2402(a) and the Armed Services Procurement Regulation (see paragraph 1-2402(a)).

(b) If the representation, as completed, or other information indicates the existence of an organizational conflict of interest, the contracting officer will determine whether a conflict does exist. If the contracting officer determines that a conflict exists, the offeror will be disqualified unless a special clause is included in the contract which is designed to adequately avoid, eliminate, or neutralize the conflict. The offeror will be permitted to negotiate the terms of the clause.

(c) When a solicitation involves a formally advertised procurement and the representation of the otherwise successful offeror indicates a conflict of interest, the contracting officer will discuss the matter with the offeror and will determine whether it is reasonable to expect that the conflict can be adequately avoided, eliminated or neutralized by the offeror. If the determination is negative, he will find that the offeror is not responsible. If the determination is affirmative, he will enter into an agreement with the contractor which adequately avoids, eliminates or neutralizes the conflict and subsequently award the contract."

(b) Failure to execute the representation will be deemed to be a minor informality and the offeror or contractor will be permitted to correct the omission.

(c) Refusal to provide the representation and any additional information required, or the nondisclosure or misrepresentation of any relevant interest shall disqualify the offeror or contractor for award.

1.2407 Contract Clauses.

1.2407-1 General Contract Clause.

All contract actions subject to the solicitation representation required by 1.2406 shall include the following clause:

ORGANIZATIONAL CONFLICTS OF INTEREST -- GENERAL

(a) The contractor warrants that, to the best of his knowledge and belief, and except as otherwise set forth in this contract, he does not have any organizational conflict of interest, as defined in the Federal Procurement Regulations (see 41 CFR 1.2402(a)) and the Armed Services Procurement Regulation (see paragraph 1-2402(a)).

(b) The contractor agrees that, if after award he discovers an organizational conflict of interest with respect to this contract, he shall make an immediate and full disclosure in writing to the contracting officer which shall include a description of the action which the contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict. The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interests of the Government.

(c) The contractor agrees further that, if the award follows a formally advertised solicitation and a conflict of interest was identified prior to award, he will adequately avoid, eliminate or neutralize the conflict in a manner satisfactory to the contracting officer.

(d) In the event that the contractor was aware of organizational conflict of interest prior to the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract at no cost to the Government.

END OF CLAUSE

1.2407-2 Special Contract Clause.

When an organizational conflict of interest is found to exist, it shall be adequately avoided, eliminated, or neutralized through the use of an appropriate special contract clause. Examples of the types of clauses which may be employed include but are not limited to the following:

- (i) Hardware exclusion clauses which prohibit the acceptance of production contracts which follow a related nonproduction contract previously performed by the contractor;
- (ii) Software exclusion clauses;
- (iii) Clauses which require the contractor, members of his Board of Directors, or his chief executives to avoid, eliminate, or neutralize an organizational conflict of interest; and
- (iv) Clauses which provide for the protection of the confidentiality of data and guard against its unauthorized use.

The prospective contractor shall be given the opportunity to negotiate the terms and conditions of the clause and its application. The extent and time period of any restrictions shall be specified in the clause.

1.2407-3 Records of use of special notices and clauses.
Agencies shall maintain, in accordance with agency procedures, and for an appropriate period of time as determined by the circumstances, a record of all special solicitation notices used pursuant to 1.2405 and of all special contract clauses incorporated in contracts pursuant to 1.2407-2.

1.2408 Contract award when an Organizational Conflict of Interest is present.

(a) When an organizational conflict of interest is present, an award shall not be made to an offeror who has a conflict unless:

(1) the conflict has been adequately avoided, eliminated or neutralized; or

(2) the head of the agency determines that the award of the contract would be otherwise in the best interests of the Government. Where such a determination is made, an appropriate written finding and determination shall be placed in the contract file.

(b) Examples of circumstances justifying the determination permitted by 1.2408(a)(2) include but are not necessarily limited to:

(1) [Situations where] the public exigency will not otherwise permit; and

(2) [Situations where] the requirement cannot otherwise be obtained.

1.2409 Action in lieu of termination.

If the contracting officer determines that it would not be in the best interests of the Government to terminate a contract

as provided in the clause required by 1.2407, the contracting officer

shall take every reasonable action to avoid, eliminate, or otherwise neutralize the organizational conflict of interest.

1.2410 Architect-engineering and construction contracts.

The award of related architect-engineering and construction contracts to the same contractor can result in self-inspection of construction work and permit the contractor to render biased decisions. Such contract awards are prohibited.

1.2411 Subcontracts

The contractor shall require a representation in accordance with Section 1.2406 from subcontractors and consultants and shall include in consultant agreements or in subcontracts involving performance of work under a prime contract covered by this section, contract clauses in accordance with 1.2407.

1.2412 Remedies

In addition to other remedies, as may be permitted by law or contract for a knowing breach of the restriction in this section or for nondisclosure or misrepresentation of any relevant interest required to be disclosed by this section, the agency shall disqualify the contractor from subsequent agency contracts.

1.2413 Specific examples of contractual relationships which constitute an inherent organizational conflict of interest and rules for their avoidance.

Introduction: The following examples illustrate types of organizational conflicts of interest which frequently arise, but [they] are not all inclusive. They are not rules in the literal sense, but are only examples of the two principles enumerated in the definition of an "organizational conflict of interest" set forth in paragraph 1-2402(a) above. These two basic principles [(1) preventing conflicting roles and competing interests which might bias a contractor's judgment and (2) preventing a contractor from gaining an unfair competitive advantage over others] are the fundamental goals which must always be borne in mind in reaching a determination as to the presence or absence of an organizational conflict of interest.

Organizational conflicts may involve not just hardware production but also software and services in many forms. Many consulting and engineering firms, for example, have no hardware capability but may nevertheless perform work under contractual situations giving rise to potential conflicts under the two principles mentioned above. Attention must be given therefore to the possible need for using both hardware and software exclusion clauses in appropriate cases, particularly in the fields of research, development, test, and evaluation, where objectivity may be influenced or a competitive advantage gained through access to information regarding future Government plans or

(a) If a contractor agrees to provide systems engineering and technical direction (SE/TD) for a system, without at the same time assuming overall contractual responsibility for:

- (1) development, or
- (2) integration, assembly, and checkout (IAC), or
- (3) production of the system, then that

contractor shall not later be allowed to supply the system or any major components thereof, or to be a sub-contractor or consultant to a supplier of the system or any major components thereof.

Explanation: The SE/TD contractor occupies a highly influential and responsible position as an agent of the Government, both in determining basic concepts of a system and in supervising their execution by other contractors. To assure the objectivity of its services and hence a more soundly planned system, the SE/TD contractor must not be in a position to make decisions which could favor its own products. Furthermore, it would be inconsistent with the managerial responsibility of an SE/TD contractor for it to be concurrently one of the component suppliers.

Illustration A: Company A agrees to provide SE/TD for the Navy on the power plant for a group of submarines (i.e., turbine, drive shafts, props, etc.). Company A shall not be allowed to supply any power plant components. Company A can, however supply components of the submarine unrelated to the power plant, [not the submarine] and the ban on the supply of components is

coterminous with the system only.

Illustration B: Company A is the SE/TD contractor for system X. After some progress, but prior to completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the SE/TD contractor for system Y. Company A may bid to produce system Y or its components.

(b) If a contractor agrees to prepare and furnish complete specifications covering nondevelopmental items to be used in competitive procurement, that contractor shall not be allowed to furnish such items, either as a prime or subcontractor, for a reasonable period of time including, at least, the initial procurement. This rule shall not apply to:

(1) Contractors who furnish at Government request specifications or data with respect to the product they furnished, even though the specifications or data may have been paid for separately or in the price of the product.

(2) Situations where one or more contractors acting as industry representatives assist Government agencies in preparing, refining, or coordinating specifications, regardless of source, which assistance is supervised and controlled by Government representatives.

(3) Contracts for developmental or prototype items.

Explanation: If a single contractor is engaged by the Government to draft complete specifications for nondevelopmental equipment, he should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation where he could draft specifications which would favor his own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of its specifications and can avoid allegations of favoritism in the award of production contracts.

In development work it is normal to select firms which have done the most advanced work in the field. It is to be expected that these firms will design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms which did not participate in the development, and this affects the time and quality of production, both of which are important to the Government. In many instances the Government may have financed such development. Thus, the development contractor may have an unavoidable competitive advantage which is not considered unfair and no prohibition should be imposed.

In instances of cooperation between industry and Government agencies to prepare, refine, or coordinate specifications, there is continuous participation and supervision by Government representatives and, usually, more than one contractor concerned. In these circumstances Government supervision prevents the establishment of specifications oriented to favor

a given contractor's products or capabilities.

Illustration A: Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. Company A shall not be allowed for a reasonable period of time to compete for supply of the refrigerator.

Illustration B: Company A designs or develops a new electronic equipment and, as a result of the design or development, prepares specifications. Company A may supply the electronics equipment.

Illustration C: XYZ Tool Company and/or KLM Machinery Company representing the American Tool Institute work under the supervision and control of Government representatives to refine specifications or to clarify the requirements of a specific procurement. These companies may supply the item.

Illustration D: Prior to selection of the Automatic Data Processing (ADP) Equipment, Company A is awarded a contract to develop software to automate an Air Force function. Since software can be written to favor a particular vendor's commercial ADP hardware, a potential conflict of interest exists. Accordingly, Company A should be barred from at least the initial follow-on ADP hardware procurement using the software developed under its development contract.

Illustration E: A System Engineering and Integration contract is awarded to Company A. As part of its effort it is required to identify and modify commercially available software packages, integrate them into a system, and identify and provide performance specifications for the commercial hardware

requirements to operate the resulting system. Since the identified packages and modifications can be biased toward a particular vendor's hardware when used in a follow-on acquisition, Company A should be barred from at least the initial follow-on computer hardware procurement.

Illustration F: A study contract is awarded to Company A to solve a computer interface problem. The effort will require the identification of commercial equipment that will solve the interface problem. Since the vendor's judgment could be biased if allowed to recommend its own equipment, it should be barred from at least the initial follow-on procurement resultant from its interface effort.

(c) If a single contractor, other than a company which has participated in the development or design of a system, agrees to assist a Government agency or a contractor of a Government agency in the preparation of a statement of work, or agrees to provide material leading directly, predictably, and without delay to a statement of work, to be used in the competitive procurement of a system or services, that contractor shall not be allowed to supply the services, or the system or major components thereof, unless it is the sole source. The content of a statement of work shall not be considered predictable if more than one contractor is involved in the preparation of material leading to it.

Explanation: The various services related to a statement of work to be used in a competitive procurement

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should normally be performed by the Government agency. However,

when it is necessary to seek the assistance of contractors, they may often be in a position to favor their own products or capabilities. To overcome this possibility of bias, such contractors are to be prohibited from supplying a system or services procured on the basis of work statements growing out of their services.

No prohibitions are imposed on development contractors for the reasons given in the explanation to rule (b).

Illustration A: Company A receives a contract to define the detailed performance characteristics a Government agency will require for the purchase of rocket fuels. A has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Government agency to choose competitively a contractor to develop or produce the fuels. Company A shall not be permitted to bid on this procurement.

Illustration B: Company A receives a contract to prepare a detailed plan for the procurement of services aimed at the advanced scientific and engineering training of a Government agency's personnel. It suggests a curriculum which the agency endorses and incorporates in requests for proposals to various institutions to establish and conduct such training. Company A shall not be permitted to bid on this procurement.

Illustration C: Company A prepares a feasibility study of a new weapons system without proposing in detail the characteristics of a possible final device. It may bid to produce the system or components thereof.

(d) If a contractor gains access to proprietary data of other companies incidental to the performance of a Government contract, the contractor must agree with such companies to protect such data from unauthorized use or disclosure so long as it remains proprietary. In addition, the contractor shall not be permitted to utilize the data for any purpose other than that for which it was furnished to him, unless otherwise specifically provided for in his contract or unless written authorization from the owner of the data has been obtained.

Explanation: Proprietary data is information considered so valuable by its owners that it is held secret by them and their licensees. Where a contractor must obtain such data from others for purposes of performing a Government contract, and can obtain it by the leverage of that contract, he will gain an advantage over other companies unless there are restrictions upon his use of the data. Such restrictions are necessary both to protect the data, and to encourage companies to furnish it to contractors when necessary for the performance of a Government contract. The rule is not intended to protect proprietary data furnished voluntarily by companies without limitations as to use, or data which falls into the public domain.

Illustration /A: Company A is selected to study the use of lasers in military communications. The Government agency will request that firms doing research in the field make proprietary data available to A. In order to receive the contract, A must agree with such firms to protect any proprietary data it obtains, so long as the data remains proprietary, and shall not be permitted to utilize the data in supplying any lasers to the Government agency. While A could not receive a competitively awarded contract to perform additional studies of lasers using such data, it may receive a contract award if it is the sole source.

(e) A contractor who in connection with the performance of a study, consulting or similar contract will be given information by a Department regarding the Department's plans or programs, which is not available to other interested potential contractors, shall not be permitted to compete with such firms for work relating to such plans or programs.

(f) A contractor shall not, without making a full disclosure to the contracting officer, and in the absence of adequate safeguards, be allowed to evaluate or give other consulting services:

(1) which will necessarily require the evaluation of the contractor's own work product or (2) with respect to the product or services of any other contractor with which the contractor has an existing consulting relationship.

(g) A contractor performing evaluation or consulting

services for the Government in connection with a competitive procurement shall not be permitted to enter into a contractual relationship with the successful offeror with respect to work arising out of or related to the performance of the contract resulting from the competition.

ROUTING AND RECORD SHEET **DD/A Registry**

SUBJECT: (Optional)

File Security

STATINTL

Proposed Policy, Organizational Conflict of Interest

FROM:

Director of Logistics

EXTENSION

NO.

OL 7 4494a

STATINTL

DATE

10 NOV 1977

TO: (Officer designation, room number, and building)

EO /DDA

DATE

RECEIVED

11 NOV 1977

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

25X1A

25X1A

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Mike:

As you know, organizational conflict of interest laws have been around for a long time. Our primary concern in the past has been with the use of "hardware exclusion" clauses for contracts for R&D to prevent an unfair advantage flowing to such contractors in follow-on hardware acquisition phases. The proposed regulatory change will impact both the FPR and the ASPR. It will require inclusion in contractor proposals of certain representations regarding existing organizational conflicts and the intent of the contractor to stay free of such conflicts during contract performance. It also establishes sanctions for violation of conflict policies. The policy changes proposed do not impinge on the DCI's responsibility for protection of sources and methods. Sufficient latitude for management discretion necessary to execute contracts critical to our mission is included. We, therefore, recommend concurrence.

James H. McDonald

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